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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,485	02/20/2004	Michael L. Howard	2291.2.9.2	2179

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MADSON & AUSTIN
GATEWAY TOWER WEST
SUITE 900
15 WEST SOUTH TEMPLE
SALT LAKE CITY, UT 84101

EXAMINER
NGUYEN, TANH Q

ART UNIT	PAPER NUMBER
2182	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)
Office Action Summary	10/784,485	HOWARD ET AL.
	Examiner	Art Unit
	Tanh Q. Nguyen	2182

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 December 2006 (RCE)</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-15</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-15</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>20 February 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____ .

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

December 26, 2006 has been entered.

Terminal Disclaimer

2.   The terminal disclaimer filed on December 26, 2006 disclaiming the terminal

portion of any patent granted on this application, which would extend beyond the

expiration date of any patent granted on Application Number 11/176,140 has been

reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Objections

3.   Claim 8 is objected to because of the following informalities: "the communications

network" in lines 14-15 should be replaced with "the wireless network" for proper

antecedent basis.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   This application currently names joint inventors. In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

6.   Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Cole et al. (US 6,074,434) in view of Lieu et al. (US 6,708,045), and alternatively over

Cole et al. (US 6,074,434) in view of Lindgren (US 6,163,274).

7.   <u>As per claim 1</u>, Cole teaches a communications adapter [client 14, FIG. 2] for

facilitating electronic communications with an electronic device [i.e. a peripheral device

of client 14] wherein the adapter is remotely reprogrammable by a provider computer

[servers 12, 17 - FIG. 2; col. 12, lines 16-18] through a communications network [20,

FIG. 1; col. 3, lines 16-19], the adapter comprising:

        a communications port for electronically connecting the adapter to the electronic

device [communications port inherent for electronically connecting a client to a

peripheral device];

communications hardware [modem, col. 3, lines 19-24] for communicating automatically with the provider computer through the communications network [server 12 is dedicated to automating selection of updates [col. 3, lines 33-37] in response to the user selecting an icon to invoke update manager 32 [col. 3, lines 62-64]];

a processor [inherent in a client]; and

memory [32, 33, 34, 39 -FIG. 2; col. 3, lines 57-60] programmed to cause the adapter to send an identification of the adapter to the provider computer via the communications network [col. 4, lines 36-39] and to receive new data sent by the provider computer via the communications network to update a program of the adapter [col. 7, lines 8-15], wherein the new data comprises device instructions for the processor for communicating with the electronic device through the communications port [col. 5, lines 13-17].

Cole does not teach the communications network being a wireless network.

Lieu teaches an adapter [201, FIG. 2] comprising a communications hardware [modem 204, FIG. 2] for communicating wirelessly through a communications network [col. 5, lines 29-34] - hence the communications network being a wireless network, and wireless communications providing mobility to the user and obviating the need for in-building wiring and cabling [col. 1, lines 15-28]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Cole's adapter in a wireless network environment because wireless communications provide mobility to the user and obviate the need for in-building wiring and cabling - as suggested by Lieu.

Alternatively, Lindgren teaches an adapter [100, FIG. 1] comprising

communications hardware [wireless paging card 60, FIG. 3] for communicating with

provider computer [10, FIG. 1] through a wireless network [120, FIG. 1].]. It would

have been obvious to one of ordinary skill in the art at the time the invention was made

to use Cole's adapter in a wireless network environment because wireless

communications provide mobility to the user and obviate the need for in-building wiring

and cabling - as suggested by Lieu.

8.   As per claims 2-4, Cole teaches the communications network being the Internet

[col. 3, lines 16-19], hence a global communications network; Lieu teaches the wireless

network being a pager network, and the wireless network being a cellular network [col.

1, lines 14-16]; Lindgren teaches the wireless network being a pager network, and the

wireless network being a global communications network [col. 3, lines 46-48].

9.   As per claims 5-6, Cole teaches the new data being device driver [col. 5, lines

13-17], hence the new data comprising a translator that includes and object

representation [e.g. ABCDE.DRV] / functional representation [a device driver] of the

electronic device. Furthermore, since it was known in the art at the time the invention

was made for a client to include a translator with object representation or functional

representation to provide protocol translation for proper communications with the

peripheral devices, it would alternatively have been obvious to one of ordinary skill in

the art at the time the invention was made for the new data to comprise a translator, in

order to provide proper communications with the peripheral devices.

10.   As per claim 7, Cole teaches the memory being further programmed to cause the

adapter to identify the electronic device and to further send an identification of the

electronic device to the provider computer via the communications network [client

identifies device drivers and sending list of updates for device drivers - col. 6, line 50-

col. 7, line 11; alternatively for a peripheral device that is not likely to change often, the

information about such peripheral device is sent to the provider computer - col. 4, lines

31-39].

11.   As per claims 8-12, the limitations of the claims generally correspond to the

limitations recited in claims 1-2, 5-7 with the electronic device having an external

communications port [peripheral device of a client having an external communications

port], and with the new instructions being used for communicating with the electronic

device without altering any program code on the electronic device [Cole teaches

updating a driver on the client and does not teach altering any code on a peripheral

device]. Claims 8-12 are therefore rejected on the same bases of claims 1-2, 5-7.

12.   As per claims 13-14, the limitations of the claims generally correspond to the

limitations recited in claims 1-2 with the electronic device having an external

communications port [peripheral device of a client having an external communications

port], and with the adapter establishing communications with the provider computer [col.

3, lines 62-64]. Claims 13-14 are therefore rejected on the same bases of claims 1-2.

13.   As per claim 15, the limitations of the claim generally correspond to the

limitations recited in claim 1 with the new instructions being used for communicating

with the electronic device without altering any program code on the electronic device

[Cole teaches updating a driver on the client and does not teach altering any code on a

peripheral device]. Claim 15 is therefore rejected on the same basis as claim 1.

Double Patenting

14.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15.   Claims 1-15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,146,254 in view of Cole et al., and further in view of Lieu et al./Lindgren.

16.   <u>As per claim 1</u>, claim 1 of US 7,146,254 claims teaches a communications adapter [interface unit] for facilitating electronic communications with an electronic device [for communicating with a watering system controller] wherein the adapter is remotely reprogrammable by a provider computer through a communications network [receive optimization data over the Internet], the adapter comprising:

a communications port for electronically connecting the adapter to the electronic

device [a second interface configured for electronic communications with a watering

system controller];

communications hardware for communicating automatically with the provider

computer through the communications network [first interface configured to receive

optimization data over the Internet];

a processor [a processor]; and

memory programmed to receive new data sent by the provider computer via the

communications network to update a program of the adapter, wherein the new data

comprises device instructions for the processor for communicating with the electronic

device through the communications port [memory being programmed to receive

optimization data and memory being programmed with modification instructions for

using the optimization data to modify the watering instructions].

Claim 1 of US 7,146,254 does not claim the adapter sending an identification of

the adapter to the provider computer to update a program of the adapter. Cole teaches

an adapter sending an identification of the adapter to the provider computer to use the

identification to determine what updates are appropriate for the update of a program of

the adapter [see rejections above]. It would have been obvious to one of ordinary skill

in the art at the time the invention was made to send an identification of the adapter to

the provider computer, as is taught by Cole, in order to determine what updates are

appropriate for the update of a program of the adapter.

Claim 1 of US 7,146,254 does not claim the communications network being a

wireless network. It would have been obvious to one of ordinary skill in the art at the

time the invention was made to use the adapter in a wireless network environment

because wireless communications provide mobility to the user and obviate the need for

in-building wiring and cabling (see Lieu and Lindgren above).

17.   As per claims 2-15, see the rejections with respect to Cole in view of Lieu et

al./Lindgren above.

Response to Arguments

18.   Applicant's arguments with respect to the pending claims have been considered

but are moot in view of the new ground(s) of rejection.

Conclusion

19.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Tanh Q. Nguyen whose telephone number is 571-272-

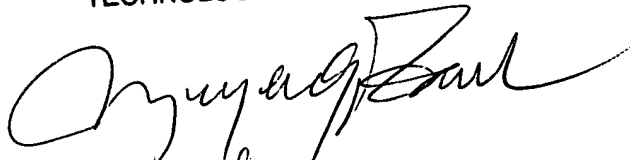4154. The examiner can normally be reached on M-F 9:30AM-7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kim Huynh can be reached on 571-272-4147. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TANH O NGUYEN
PRIMARY EXAMINER
TECHNOLOGY CENTER 2100

March 12, 2007

TQN
March 12, 2007